No. 20.

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JAMES H. MCKENNEY,
Clerk

Supp. Brf. of Douglas & Childs

IN THE

SUPREME COURT

OF THE UNITED STATES.

Filed Oct. 12, 1900.

OCTOBER TERM, 1900.

NO. 20.

FRED STEARNS, AS COUNTY AUDITOR OF AITKIN COUNTY, MINNESOTA,

Plaintiff in Error,

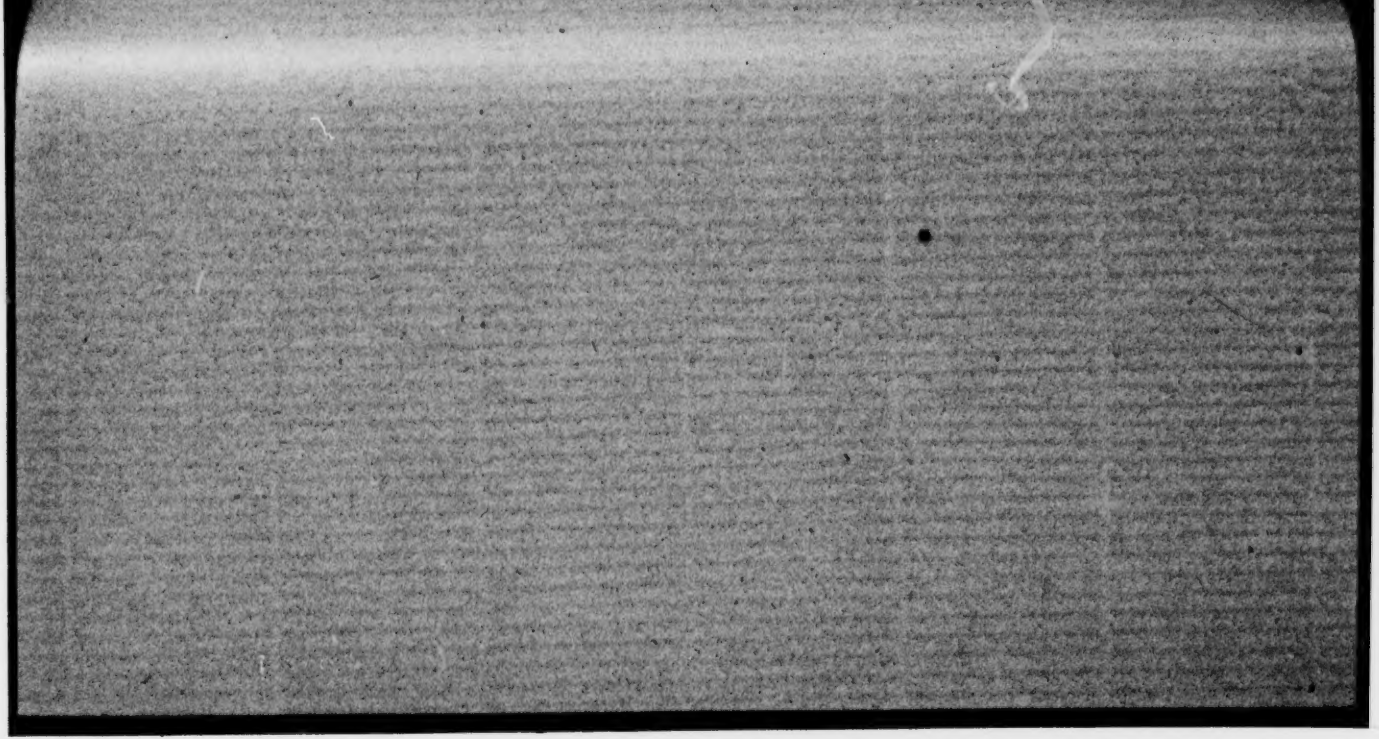
against

STATE OF MINNESOTA, ON THE RELATION OF JAMES N. MAHR,

Defendant in Error.

Supplemental Brief for Defendant in Error.

W. B. DOUGLAS, Attorney-General,
and
H. W. CHILDS,
Attorneys for Defendant in Error.



IN THE

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 20.

FRED STEARNS,
as County Auditor
of Aitkin County, Minnesota,
Plaintiff in Error,
AGAINST
STATE OF MINNESOTA,
on the Relation of James N. Marr,
Defendant in Error.

Supplemental Brief for Defendant in Error.

THAT THE ACCEPTANCE OF CHAPTER 8 OF THE SPECIAL LAWS OF MINNESOTA FOR THE YEAR 1865 BY THE ST. PAUL AND DULUTH, AND THE NORTHERN PACIFIC RAILROAD COMPANIES DID NOT CONSTITUTE CONTRACTS IN FORM BETWEEN THE STATE OF MINNESOTA AND SUCH COMPANIES.

I.

Counsel for Plaintiff in Error call attention to the language

of Mr. Justice Mitchell in *State versus Luther, 56 Minn., 164,* wherein it is stated, referring to Chap. 8 of the Laws of 1865:

"The effect of this by necessary implication was that until the sale or lease the lands were to be entirely exempt from taxation in the ordinary way."

The learned counsel overlook the fact that upon rehearing, in the decision reported on the page following, the Court expressly overruled the language quoted. The Court therein say: "But inasmuch as an *obiter* remark in the opinion might be understood to mean that acts providing for a commuted system of taxing *railroad property and granted lands* constitute contracts between the State and the railroad companies which cannot be repealed or amended, it is proper to say that no such question was before the Court, and that the remark referred to was not intended to express or intimate any opinion on that point."

II.

The strict rule of construction applicable to grants creating exemption from taxation is fully illustrated and summarized in the decision of this Court in Vicksburg, etc., Railroad Company against Dennis, 116 U. S., 668, wherein the Court speaking by Mr. Justice Gray, say:

"In Philadelphia and Wilmington Railroad Company against Maryland, 10th How., 376, Chief Justice Taney said, 'This Court, on several occasions, has held that the power of the State is never presumed to be relinquished unless the intention to relinquish is declared in clearly unmistakable terms.'

In subsequent decisions the same rule has been strictly applied. It has been said "that neither the right of taxation nor any other power of sovereignty will be held by this court

to have been surrendered, unless such surrender is expressed in terms too plain to be mistaken." Also, that exemption from taxation should never be assumed "unless the language used is too clear to admit of doubt. "That such exemption was regarded as in abrogation of the sovereign authority and of common right, and therefore not to be extended beyond the exact expressed requirements of the grants construed *strictissimi juris*."

In that case the Court had before it a clause in the charter of the Vicksburg Company, reading as follows: "The capital stock of said company shall be exempt from taxation, and its road, fixtures, workshops, warehouses, vehicles of transportation, and every appurtenance shall be exempt from taxation *for ten years after completion of said road within the limits* of the State."

The Court held this language must be construed as not preventing the taxation of the road, fixtures, and appurtenances, *prior* to the completion of the road. That if the legislature had so intended it would have used in the charter the term "*until* ten years" after completion instead of "for ten years."

So for purposes of taxation, in Ford against Delta Pine Land Company, 164 U. S., 666, this Court held that "the capital and all the property and effects of said Company" did not include lands acquired which are not necessary for the construction, operation, and equipment of its railroad.

In 1833 the legislature of Pennsylvania passed an act providing that "the real property, including ground rents, now belonging to Christ Church Hospital, in the city of Philadelphia, so long as the same shall continue to belong to said hospital, shall be and remain free from taxes."

In 1853 a law was passed which subjected the ground rents to taxation. It was insisted that the act of 1833 constituted an irrevocable contract. But this Court held otherwise, affirming the Supreme Court of Pennsylvania—*Christ Church*

Hospital vs. *The County of Philadelphia*, 24 Howard, 301, approved in *Tucker against Ferguson*, 22 Wallace, 574.

Tested by the strict rules of construction above noted, it is submitted that the acceptance of the taxation enactment of March 3, 1865, known as Chap. 8, of the Special Laws of Minnesota for 1865, did not constitute an irrevocable contract involving the subject of taxation, or creating a partial immunity therefrom, between the State of Minnesota and the St. Paul & Duluth and the Northern Pacific Railroad Companies.

The enactment in question was not a part of the original grant to the Duluth Company made by Chap. 2 of the Special Laws of 1865, but was a separate and distinct provision. This exemption, which is claimed to be an irrevocable contract, reads: "Provided that said Company * * * shall, from and after the expiration of said seven years, on or before the first day of March of each and every year, pay into the treasury of this State three per cent. of the gross earnings of said railroad, and the payment of such percentum annually as aforesaid shall be, and is in full, of all taxation and assessment whatever."

Particular attention is called to the fact that this provision does not contain the words *forever exempt*, which were included in the Territorial enactment of 1857, before the Court in the Parcher case, reported in 14 Minn., 325, and other cases cited by counsel in their brief.

The latter provision there quoted reads as follows:

"And in consideration of such annual payments the said Company *shall be forever exempt* from all assessments and taxes whatever by the Territory, or State which shall succeed the Territory, * * and said land granted by said act of Congress, hereby authorized to be conveyed to said Minnesota & Pacific Railroad Company, shall be exempt from all taxation whatever until sold and conveyed."

The Court, after quoting the act in full, adds (page 325):

"The other act in relation to the taxation of these lands, approved March 4, 1865, we do not deem it necessary to consider in this case."

The omission of the words '*forever exempt*' or words of like import from the act which forms the basis of the pretended irrevocable contract clearly indicates that the sovereign power of taxation was not granted away.

W. B. DOUGLAS.
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Attorneys for Defendant in Error.